

DETERMINATION TO NOT TAKE SUPERFUND ACTION

Crouse-Hinds Landfills
and Mathews Avenue Landfill
Onondaga Lake Areas of Concern

United States Environmental Protection Agency
Region II
New York, New York
June 2012

DETERMINATION TO NOT TAKE SUPERFUND ACTION

Introduction

Following the development of the Hazard Ranking System¹ scoring package and the listing of the Onondaga Lake Superfund Site on the National Priorities List, investigations at areas of concern determined the boundaries of the Onondaga Lake Superfund Site to be Onondaga Lake and any tributaries or upland areas that contribute or have contributed contamination to Onondaga Lake. These boundaries of the Superfund Site were memorialized through the decision and enforcement documents subsequently issued for the Onondaga Lake Superfund Site.

Currently, twelve areas of concern have been determined to be part of the Onondaga Lake Superfund Site. By this document, the Environmental Protection Agency (EPA) is documenting its determination to not take federal Superfund action at two other areas, which were evaluated, but are not included in the twelve areas of concern noted above. These two areas of concern are the Crouse-Hinds North and South Landfills and the Mathews Avenue Landfill (see Appendix I, Figure, attached hereto, for the location of the areas of concern).

Because there is no identified pathway for Site-related contamination to migrate from either the Crouse-Hinds North and South Landfills or the Mathews Avenue Landfill areas of concern to Onondaga Lake, no action is required under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.* The fact that no Superfund response action is anticipated regarding these areas of concern does not in any way affect any future potential Natural Resource Damages (NRD) claims. In addition, this determination does not preclude New York State or the NRD Trustee Council from taking actions at these areas under their authorities, as appropriate.

Crouse-Hinds North and South Landfills

The Crouse-Hinds North and South Landfills area of concern consists of two adjacent, uncovered, inactive landfills—the 21.5-acre North Landfill and the 19.4-acre South Landfill. The North Landfill is located in the Town of Salina and the South Landfill is located in the City of Syracuse. The landfills are separated by Seventh North Street and are located in an area that includes light industrial and commercial usage. Ley Creek, a tributary of Onondaga Lake, flows from north to south, west of the area of concern. The North Landfill is separated from Ley Creek by undeveloped property owned by Plaza East, LLC. The western boundary of the South Landfill is adjacent to Ley Creek.

¹

The Hazard Ranking System, a numerically-based screening system that uses information from initial, limited investigations to assess the relative potential of sites to pose a threat to human health or the environment, is the principal mechanism EPA uses to place uncontrolled hazardous waste sites on the National Priorities List.

South Landfill will be submitted for review by Fall 2012 and that the design for the North Landfill will be submitted by mid-2013. The hot spot excavation work in the North Landfill is planned for fall 2012.

Mathews Avenue Landfill

The unlined Mathew's Avenue Landfill was formerly a construction/demolition debris disposal area used by AlliedSignal (predecessor to Honeywell International Inc. or Honeywell). The area of concern consists of the landfill and an adjacent ponded/wetland area located north of the landfill and south of the Erie Canal.

Limited investigations by Blasland and Bouck involving the excavation of test pits were completed in 1989 and 1990. Mercury and chlorinated benzene compounds were detected in soil samples collected from the test pits. Mercury and other contaminants, including chlorinated benzenes, other volatile organic compounds, PCBs, and lead, were also detected in sediment samples collected by NYSDEC in 1996 and 1997. A PSA was performed at the area of concern in 2002 and 2003. Results of the PSA demonstrate elevated levels of volatile organic compounds (*e.g.*, chlorobenzene), semi-volatile organic compounds (*e.g.*, naphthalene, dichlorobenzenes, phenols, and polyaromatic hydrocarbons), PCBs, and metals (*e.g.*, chromium, copper, lead, mercury, nickel, and zinc). During the PSA investigation, Allen-Moore diaphragm cells (and possibly mercury cells), which are associated with the Chlor-Alkali process (which was employed at AlliedSignal's LCP/Bridge Street and Willis Avenue plants), were detected in the landfill. Honeywell-related contaminants (mercury and chlorinated benzenes) have been detected in landfill soils, surface water, and sediments located in the ponded/wetland area and a swale that is immediately adjacent to the landfill. Sampling results show that there is sediment and surface water contamination at the site, but there are no off-site impacts. Specifically, mercury concentrations in sediment and surface water are elevated in the drainage swale adjacent to the area of concern and south of the Erie Canal that discharges to Geddes Brook; however, contaminant concentrations in the swale decrease as the distance from the landfill increases. In the groundwater, vinyl chloride, trichloroethylene, and tetrachloroethylene have been detected in some deep wells located in the vicinity of and downgradient of the landfill, however, the contamination is limited in areal extent and dissipates to levels that are below groundwater standards or to non-detect levels. Mercury concentrations in Geddes Brook downstream of the landfill (and upstream of where the West Flume, a man-made stream, discharges to Geddes Brook) are below NYSDEC's Lowest Effect Levels² for sediment. In addition, mercury was not detected in surface water samples in this portion of the brook.

Although the landfill is located upgradient of Geddes Brook, the results of sediment samples from the brook indicate that contaminants have not migrated to it. Specifically,

² Lowest Effect Level is a level of sediment contamination that can be tolerated by the majority of benthic organisms.

An unknown quantity of foundry sand from the adjacent Crouse-Hinds manufacturing facility was disposed of in the North Landfill from the mid-1950s through 1972. From 1972 through approximately 1979, the North Landfill was used for the disposal of approximately 85 cubic yards per day of industrial wastes, including foundry sand, floor sweepings, metal buffing, polishing residue, scrap lumber, plastic wastes, and paint scrapings from the Crouse-Hinds facility. Zinc hydroxide sludge was deposited in the landfill between 1972 and 1980. From 1980 to 1983, approximately 40 cubic yards per day of industrial waste, including foundry sand and core butts were disposed of in the landfill from the facility. The North Landfill has been inactive since 1989. From 1960 to 1969, the South Landfill accepted a combination of municipal solid waste from the City of Syracuse and industrial waste from the Crouse-Hinds facility. The industrial waste consisted of foundry molds, core sand, scrap steel drums, fly ash, paint scrapings, garbage, and construction and demolition debris. Approximately 2,000 cubic yards per week of municipal solid waste from the City of Syracuse were accepted at the landfill from 1960 to 1963. The South Landfill has been inactive since 1969. In 1984, the two landfills were listed as a "Class 3" New York State Inactive Hazardous Waste Disposal Site (Site No. 7-34-004) pursuant to New York State Environmental Conservation Law.

Investigations at the landfills conducted in the 1980s by the New York State Department of Environmental Conservation (NYSDEC) indicated that site-related contaminants had migrated to Ley Creek. Specifically, cyanide and phenol were detected in the surface water of Ley Creek adjacent to and downstream of the landfills at concentrations exceeding their respective surface water standards. In addition, cyanide was detected in Ley Creek sediments near the landfills at that time. A 2004 Preliminary Site Assessment (PSA) and a 2006 Supplemental Site Assessment (SSA) were conducted by Crouse-Hinds under NYSDEC oversight. The PSA/SSA, which consisted of test pit excavations to aid in the determination of the horizontal and vertical extent of fill in the landfills, collection and analysis of soil/waste samples from the test pits, surface soil sampling and analysis, groundwater and leachate sampling and analysis, drainage channel and Ley Creek sediment and surface water sampling and analysis, and wetlands delineation indicated that landfill-related contaminants were either not detected or were not detected above upstream concentrations in Ley Creek. While there may be a minor threat of release to the tributary, the PSA and SSA indicate that the landfills do not appear to be a threat to Onondaga Lake.

A remedial investigation was completed in August 2009 and a feasibility study was completed in April 2010. On February 4, 2011, NYSDEC released a Proposed Remedial Action Plan, proposing a remedy for the landfills. A public meeting was held on February 17, 2011. A remedy was selected by NYSDEC on March 31, 2011. The major features of the selected remedy include excavation and off-site disposal of three hot spots in the North Landfill, consolidation of waste within both the North and South Landfills to protect surface water and wetlands, excavation and proper disposal of PCB-contaminated wetland sediments, and placement of engineered caps over both landfills. A work plan outlining the tasks that need to be performed to design and construct the selected remedy was approved by NYSDEC on April 26, 2012. It is anticipated that the design for the

contaminants detected in the landfill and an adjacent swale which discharges to Geddes Brook were not elevated in the portion of Geddes Brook located between where the swale discharges to Geddes Brook and the West Flume. While surface soil may be eroded as a result of surface water runoff, and could potentially migrate off-site, surface soil migration through the drainage swales is unlikely due to the presence of dense vegetation in the swales.

Currently, the site is being used only for limited activities. The Village of Solvay Public Works uses a small portion of the site south of the landfilled area for the storage of equipment and yard waste (mulch). Solvay Electric utilizes the property to access the electric substation situated in the south-central portion of the property. A remediation plan to support the redevelopment of the property is currently being prepared by 301 Belle Isle Road LLC, a developer, under NYSDEC's Brownfield Cleanup Program³.

Supporting Documentation

Documentation in support of this determination includes the following:

Crouse-Hinds North and South Landfills

- *Hydrogeologic Investigation*, Empire, 1983
- *Phase I Report, Engineering Investigations and Evaluations at Inactive Hazardous Waste Disposal Sites*, Crouse-Hinds, Dames & Moore, 1983
- *Site Summary Report*, TAMS Consultants, Inc., 1998
- *Preliminary Site Assessment*, InteGreyted, 2004
- *Supplemental Site Assessment Report*, Delta, 2006

Mathews Avenue Landfill

- *Mathews Avenue Preliminary Site Assessment Report*, O'Brien & Gere, April 2007
- *Remedial Action Work Plan, Parcel A, Mathews Avenue Site Development*, O'Brien & Gere, October 2010
- *Joint Application for Permit, Mathews Avenue Site Development*, O'Brien & Gere, October 2010
- *Stormwater Pollution Prevention Plan, Mathews Avenue Site Development*, O'Brien & Gere, October 2010
- *Stormwater Management Plan, Mathews Avenue Site Development*, O'Brien & Gere, October 2010

³ The Brownfield Cleanup Program spurs private-sector cleanup, redevelopment, and reuse of contaminated properties.

Highlights of Community Participation

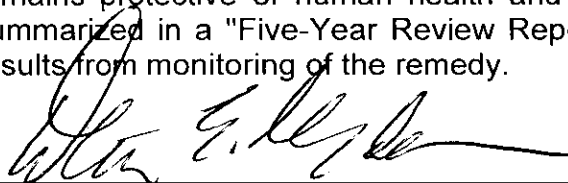
On March 15, 2012, EPA published a notice in the *Syracuse Post-Standard* announcing the commencement of a 30-day public comment period on its March 2012 *Notice of U.S. Environmental Protection Agency's Determination to Not Take Superfund Action at Crouse-Hinds Landfills and Mathews Avenue Landfill Areas of Concern*. The Notice of Determination provided the basis for EPA's decision to not take Superfund action at the Crouse-Hinds North and South Landfills and the Mathews Avenue Landfill areas of concern. The Notice of Determination, as well as documents in support of this document, was made available to the public in five local repositories and on EPA's website for a 30-day comment period which concluded on April 14, 2012.

As part of the consultation process, a draft *Notice of U.S. Environmental Protection Agency's Determination to Not Take Superfund Action at Crouse-Hinds Landfills and Mathews Avenue Landfill Onondaga Lake Areas of Concern* was provided to the Onondaga Nation. In response to comments on the draft document from the Onondaga Nation, a modification was made to the Notice and a written response was provided to the Nation on March 5, 2012. The Onondaga Nation reissued its comment letter on May 3, 2012. See Appendix II, attached hereto, for the Onondaga Nation's comment letters and EPA's response.

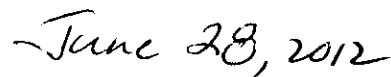
Authorizing Signature

Based on the foregoing, EPA, with NYSDEC's concurrence, has concluded that no federal Superfund response actions are required relating to the Onondaga Lake Superfund Site at the Crouse-Hinds Landfills and Mathews Avenue Landfill areas of concern. Both areas of concern are being or will be addressed under state authorities. The fact that no federal Superfund response action is anticipated regarding these areas of concern does not in any way affect what is considered to be the Onondaga Lake Superfund Site for the purpose of future potential NRD actions, nor does it affect Superfund action taken or to be taken in other areas of concern at the Onondaga Lake Superfund Site.

Pursuant to CERCLA requirements, the Onondaga Lake Bottom Site remedy will be reviewed not less than once every five years (beginning August 2015) to ensure that it remains protective of human health and the environment. This review, which will be summarized in a "Five-Year Review Report," will be based upon an evaluation of the results from monitoring of the remedy.



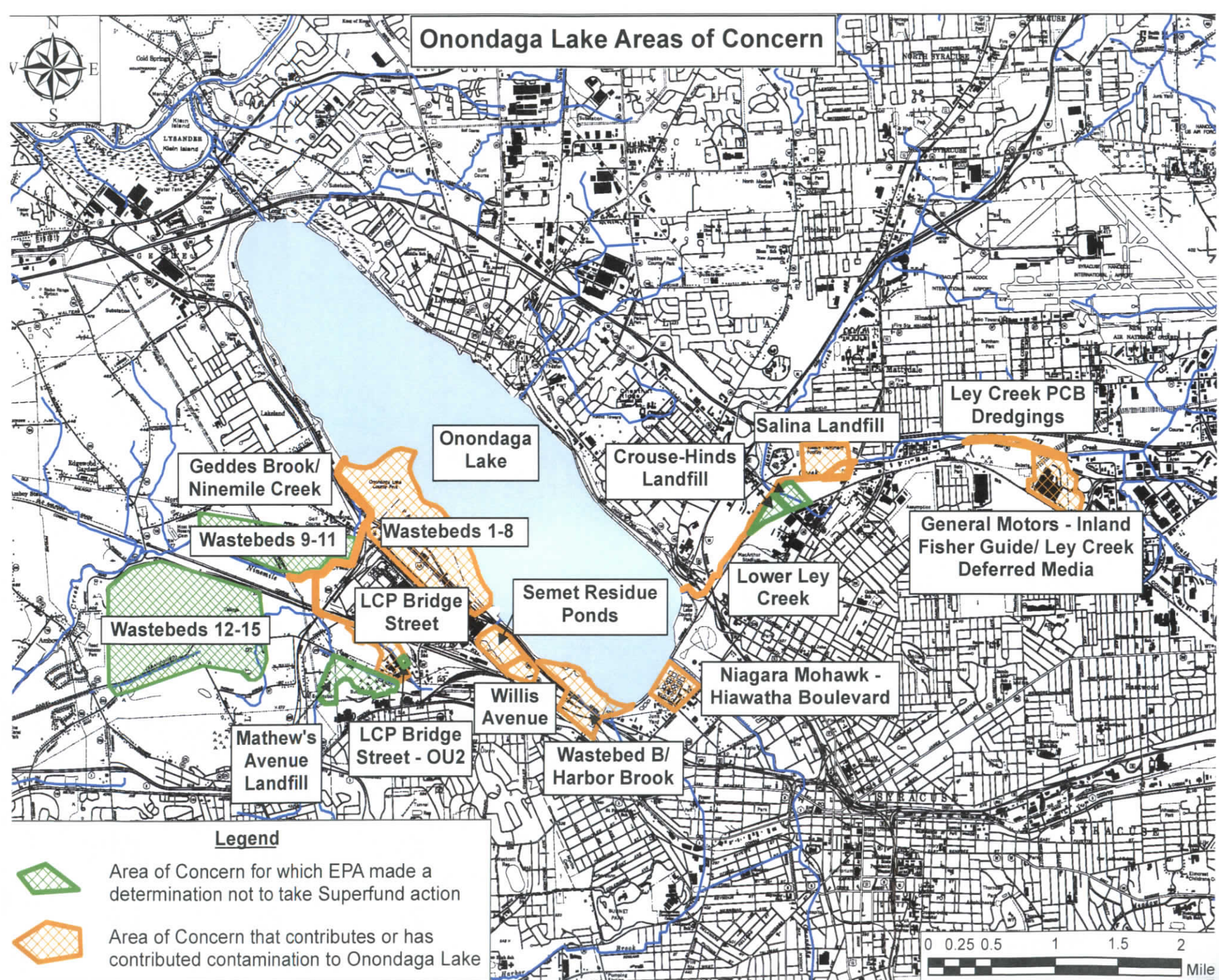
Walter E. Mugdan, Director
Emergency and Remedial Response Division



Date

APPENDIX I
FIGURE

Onondaga Lake Areas of Concern



APPENDIX II
RESPONSIVENESS SUMMARY

Responsiveness Summary

As part of the consultation process, a draft *Notice of U.S. Environmental Protection Agency's Determination to Not Take Superfund Action at Crouse-Hinds Landfills and Mathews Avenue Landfill Onondaga Lake Areas of Concern* was provided to the Onondaga Nation. In response to comments on the draft document from the Onondaga Nation, a modification was made to the Notice and a written response was provided to the Nation on March 5, 2012. The Onondaga Nation reissued its comment letter on May 3, 2012. Attached are the Onondaga Nation's comment letters and EPA's response.

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March 30, 2011

Robert Nunes
Remedial Project Manager
Central New York Remediation Project
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

**Re: Consultation regarding the U.S. EPA's Determination to Not Take
Superfund Action at Crouse Hinds Landfill and Mathews Avenue Landfill**

Dear Mr. Nunes:

As General Counsel to the Onondaga Nation, I am submitting these comments on the EPA's Determination to Not Take Superfund Action at two locations on or near Onondaga Lake. The Onondaga Nation is a federally recognized Indian Nation occupying the currently recognized Onondaga Nation Territory within Onondaga County, New York. The Nation is one of the Six Nations of the Haudenosaunee Confederacy and was one of the Nations with whom the United States sought peace and friendship in 1794 in the Treaty of Canandaigua. The EPA provided its draft Determination to the Nation pursuant to its consultation obligations with Indian Nations and we are providing these comment as part of that government-to-government relationship.

In 2009, the Nation raised substantive and procedural concerns regarding the EPA's decision not to take Superfund action at particular sites within the Onondaga Lake watershed and arguably tied to the Onondaga Lake Superfund site. Although we are pleased that the EPA has chosen to revise its Determination process and is providing notice and an opportunity for public comment, we continue to object to the substantive criteria used by EPA to make its determination.

The EPA's stated reliance on the presence of a current "pathway for Site-related contamination to migrate. . . to Onondaga Lake" is not grounded in regulation or law. Rather, as described in the HRS package, any determination to eliminate a site from remediation under Superfund should focus on the nexus between the site being reviewed and sites that are or could have been the basis for the Onondaga Lake Superfund site listing. Using this standard, the Mathews Avenue Landfill site must be included within the Onondaga Lake Superfund remediation, while the Crouse Hinds Landfill requires a more thorough assessment to determine whether its should be included as well.

1. Legal Standards

Although designated the Onondaga Lake Superfund Site, the site was not defined by or limited to impacts on the Lake. In issuing the final HRS scoring package, the EPA noted that Superfund sites are often defined in geographic terms related to the source of the waste, but that "[a]s a legal matter, the site is not coextensive with that area. . . . Rather, the site consists of all contaminated areas within the area used to define the site, and any other location to which contamination from that area has come to be located" (Onondaga Lake HRS Package, 1995, p. 1) (emphasis added). The fact that the EPA named this site for a geographic landmark in which much of the contamination came to be located rather than a contamination source does not change the legal effect of a site name. In keeping with the language of the HRS package, the Onondaga Lake Superfund site must include all sources of contamination to Onondaga Lake and any other location to which contamination from those sources has come to be located. Remedial action at any site meeting this definition should be taken as part of the federal Superfund action.

Under this definition, the Nation believes that the Mathews Avenue Landfill must be considered a core part of the Onondaga Lake Superfund site and any remediation done at that site should be considered part of the federal action. Based on the information available to the Nation at this time, Crouse Hinds Landfill may fall outside the scope of the Onondaga Lake remedial action.

2. Factual Background

Onondaga Lake was placed on the National Priorities List on December 16, 1994. 59

Fed. Reg. 65206. To reach this decision, EPA relied on a Hazard Ranking System scoring package, which evaluated the dangers posed by hazardous releases from two industrial facilities and several disposal sites for wastes from these facilities. The HRS scoring package specific evaluated the Willis Avenue Plant, the LCP Bridge Street Plant, the Semet Residue Ponds and Solvay Waste Beds 9 through 15. All of these facilities were operated by or received wastes from Allied Signal or the Solvay Process Company.

The Mathews Avenue Landfill site incorporates a 20-acre parcel used by Allied Signal and the Solvay Process Company (Fact Sheet for Mathews Avenue Landfill, Atlantic States Legal Foundation, www.aslf.org/onondagalake/Sitedescription). Process wastes and construction and demolition debris generated by Allied Signal and the Solvay Process Company were deposited at this Landfill. The facilities within the original HRS scoring package, including the Willis Avenue Plant, the LCP Bridge Street Plant, and the Solvay Waste Beds, were tied to Allied Signal and/or the Solvay Process Company. Contaminated wastes from these facilities have "come to be located" in the Mathews Avenue. Thus, by the terms of the HRS package, this subsite should be considered part of Onondaga Lake Superfund site and it should be remediated as part of that federal action.

Crouse Hinds Landfill, on the other hand, appears to have accepted wastes only from the Crouse Hinds facility. This facility was not part of the original HRS package and the facility itself does not appear to have been a direct source of contamination to the Lake. Thus, the Landfill is not a site where contamination from sources within the Onondaga Lake Superfund site has come to be located.

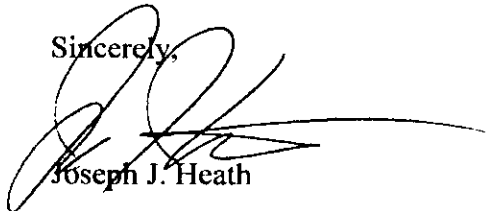
The EPA has taken the position that the Crouse Hinds Landfill does not contribute contamination to Onondaga Lake, based on an assessment of contaminants present upstream and downstream from the site. However, there is an unobstructed groundwater to surface water pathway from the site to Ley Creek, which is a tributary of Onondaga Lake. Given this obvious and unobstructed pathway for contaminant transfer, the Nation believes that a more thorough assessment of the contaminants downstream of the Landfill is necessary to justify the EPA's conclusion regarding the Landfill's impacts on the Lake. Better methods, such as contaminant finger-printing or congener analysis, are available and should be employed before the EPA decides to remove Crouse Hinds Landfill from remediation under federal authority. However, if this more refined analysis supports the EPA's conclusion that Crouse

ROBERT NUNES
March 29, 2011
Re: CROUSE HINDS and MATHEWS AVENUE LANDFILLS
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Hinds Landfill does contribute contaminants to the Lake, the Nation will not object to EPA's determination not to take federal Superfund action at this site.

In conclusion, the Nation objects to EPA's determination not to take federal Superfund action at the Mathews Avenue Landfill site, because the evidence suggests that contamination from the original Superfund site has come to be located there. Without stronger evidentiary support for the position that Crouse Hinds Landfill is not a source of contamination to the Lake, the Nation objects to the determination with respect to Crouse Hinds Landfill as well. If EPA can provide the type of technical support described above, the Nation will review the determination that remedial action at the Crouse Hinds Landfill falls outside the scope of the Onondaga Lake Superfund Site.

Sincerely,



Joseph J. Heath

cc: Onondaga Nation Council of Chiefs



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

March 5, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joseph J. Heath
General Counsel for the Onondaga Nation
Attorney at Law
716 East Washington Street
Syracuse, New York 13210-1502

Re: Consultation on the U.S. Environmental Protection Agency's Determination to Not Take Superfund Action at Crouse Hinds Landfills and Mathews Avenue Landfill

Dear Mr. Heath:

This is in response to your March 29, 2011 letter to Robert Nunes on the Environmental Protection Agency's (EPA's) Determination to Not Take Superfund Action at the Crouse Hinds Landfills and Mathews Avenue Landfill areas of concern. We welcome the Nation's consultation on the EPA's draft determination and thank you for your comments.

Your comment letter asserts that EPA's reliance on the presence of a historic or present "pathway for Site-related contamination to migrate. . . to Onondaga Lake" is not grounded in regulation or law, and that any determination to eliminate an area of concern from remediation under Superfund should focus on the nexus between the area being reviewed and areas of concern that are or could have been the basis for the Onondaga Lake Superfund Site listing. You then concluded that the Mathews Avenue Landfill area of concern should be included within the Onondaga Lake Superfund remediation, since contaminated wastes generated by Allied Signal and the Solvay Process Company have "come to be located" in the Mathews Avenue Landfill.

The legal standards section of your letter provides that the Site itself was not defined in the HRS package when first listed on the National Priorities List (NPL). However, the Site Summary within the HRS package describes the Lake itself as the geographic area of impact, rather than simply the geographic name of the Site. (Onondaga Lake HRS Package, Site Summary, 1995). The comment letter correctly quotes from the HRS package, which provides that boundaries of a site consist of all areas within the area of contamination used to define a site and any other location to which contamination from the area has come to be located. When a site is first listed on the NPL, a preliminary assessment is conducted of the release or sources of contamination of

the area of impact establishing the preliminary boundaries of the site. As such, the preliminary assessment of the release at the time the Onondaga Lake Superfund Site was scored was the

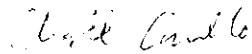
identification of four source areas of release to the area of impact (Onondaga Lake). Once listed on the NPL, the boundaries of a site are subject to change upon further investigation of the sources and extent of the contamination as part of the remedial investigation and feasibility study (RI/FS). (See, 40 C.F.R. Part 300 National Priorities List for Uncontrolled Hazardous Waste Sites, 56 *Fed. Reg.* 5598, 5600, February 11, 1991). It is through the RI/FS process that the boundaries have been determined for the Onondaga Lake Superfund Site and subsite determinations that have been made. However, the boundary of a Site remains tied to the original geographic area of impact set out in the HRS package, although it may increase or decrease in size. It is for this reason that following the HRS scoring package and listing of the Onondaga Lake Superfund Site on NPL, investigations of areas of concern determined the boundaries of the Onondaga Lake Superfund Site to be Onondaga Lake and any tributaries or upland areas that contribute or have contributed contamination to Onondaga Lake. In your letter you stated that the Crouse Hinds Landfills would require a more thorough assessment to determine whether it should be included as part of the Onondaga Lake Superfund Site, since there is an unobstructed groundwater to surface water pathway from the area of concern to Ley Creek. You also suggested that additional investigative methods, such as contaminant fingerprinting and congener analysis, be utilized to aid in the assessment of potential impacts to the Lake. With respect to the evaluation of the groundwater to surface water pathway from the Crouse-Hinds Landfills area of concern to Ley Creek, extensive groundwater, surface water, and sediment sampling has been performed since 1981. Based on a thorough assessment of the entire data set, and including data from the March 2011 Crouse-Hinds Landfills Record of Decision, it has been concluded that the disposal of waste in the landfills has resulted in the localized contamination of groundwater on-site within an extremely tight strata (peat). While groundwater does migrate off-site, there is no discernible impact to Ley Creek from site groundwater. In addition, Ley Creek surface-water and sediment quality was generally consistent from upstream to downstream.

Given the large extent of data available for the media of concern and the thorough evaluation of those media relative to each other, contaminant fingerprinting and congener analysis are not seen as tools that would provide useful information with respect to Ley Creek and the Crouse-Hinds landfills.

As EPA has determined that both the Crouse Hinds Landfills and Mathews Avenue Landfill do not appear to pose threats of contaminant releases to Onondaga Lake, it has been determined that no federal Superfund action is needed at either area of concern as part of the Onondaga Lake Superfund Site. (As you are aware, New York State is pursuing actions at both areas of concern under its authorities). EPA will be publishing the Notice to Not Take Superfund Action for the Crouse Hinds Landfill and the Mathews Avenue Landfill areas of concern for public comment shortly. If you would like to send additional comments on the Notice at that time, please direct

them to Robert Nunes. If you have any additional comments that you wish to provide prior to release of the Notice, please send them directly to me.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Argie Cirillo".

Argie Cirillo, Esq.
New York/Caribbean Superfund Branch
Office of Regional Counsel

cc: Thane Joyal, Esq.
Alma Lowry

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May 3, 2012

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**Re: Consultation regarding the U.S. EPA's Determination to Not Take Superfund
Action at Crouse Hinds Landfill and Mathews Avenue Landfill**

Dear Ms. Cirillo:

As General Counsel to the Onondaga Nation, I am submitting this letter as part of the public comment on the EPA's Determination to Not Take Superfund Action at two locations on or near Onondaga Lake. The Onondaga Nation is a federally recognized Indian Nation occupying the currently recognized Onondaga Nation Territory within Onondaga County, New York. The Nation is one of the Six Nations of the Haudenosaunee Confederacy and was one of the Nations with whom the United States sought peace and friendship in 1794 in the Treaty of Canandaigua. The EPA provided its draft Determination to the Nation pursuant to its consultation obligations with Indian Nations and we are providing these comment as part of that government-to-government relationship.

In 2009, the Nation raised substantive and procedural concerns regarding the EPA's decision not to take Superfund action at particular sites that were within the Onondaga Lake watershed and arguably tied to the Onondaga Lake Superfund site. Although we are pleased that the EPA has chosen to revise its *Determination* process and is providing notice and an opportunity for public comment, we continue to object to the substantive criteria used by EPA to make its determination.

The EPA's continued reliance on the presence of a current "pathway for Site-related contamination to migrate. . . to Onondaga Lake" is not grounded in regulation or law. Rather, as described in the HRS package, any determination to eliminate a site from remediation under Superfund should focus on the nexus between the site being reviewed and sites that are or could have

been the basis for the Onondaga Lake Superfund site listing. Using this standard, the Mathews Avenue Landfill site must be included within the Onondaga Lake Superfund remediation, while the Crouse Hinds Landfill requires a more thorough assessment to determine whether it should be included as well.

1. Legal Standards

Although designated the Onondaga Lake Superfund Site, the site was not defined by or limited solely to impacts on the Lake itself. In issuing the final HRS scoring package, the EPA noted that Superfund sites are often defined in geographic terms related to the source of the waste, but that "[a]s a legal matter, the site is not coextensive with that area. . . . Rather, the site consists of all contaminated areas within the area used to define the site, and any other location to which contamination from that area has come to be located" (Onondaga Lake HRS Package, 1995, p. 1) (emphasis added). Within the HRS scoring package, the EPA considered impacts on various tributaries, including Nine Mile Creek and Geddes Brook, without discussion of or referent to the likelihood that contamination of these tributaries would eventually result in damage to Onondaga Lake itself. The Nation reiterates its position that the fact that the EPA named this site for a geographic landmark in which much of the contamination came to be located rather than a contamination source does not change the legal effect of a site name. In keeping with the language of the HRS package, the Onondaga Lake Superfund site must include all sources of contamination to Onondaga Lake and any other location to which contamination from those sources has come to be located. Remedial action at any site meeting this definition should be taken as part of the federal Superfund action.

Under this definition, the Nation believes that the Mathews Avenue Landfill must be considered a core part of the Onondaga Lake Superfund site and any remediation done at that site should be considered part of the federal action. Based on the information available to the Nation at this time, Crouse Hinds Landfill may fall outside the scope of the Onondaga Lake remedial action, but more careful evaluation is required to make this determination.

2. Factual Background

Onondaga Lake was placed on the National Priorities List on December 16, 1994. 59 Fed. Reg. 65206. To reach this decision, EPA relied on a Hazard Ranking System scoring package, which evaluated the dangers posed by hazardous releases from two industrial facilities and several disposal sites for wastes from these facilities. The HRS scoring package specifically evaluated the Willis Avenue Plant, the LCP Bridge Street Plant, the Semet Residue Ponds and Solvay Waste Beds

9 through 15. All of these facilities were operated by or received wastes from Allied Signal or the Solvay Process Company.

The Mathews Avenue Landfill site incorporates a 20-acre parcel used by Allied Signal and the Solvay Process Company (Fact Sheet for Mathews Avenue Landfill, Atlantic States Legal Foundation, www.aslf.org/onondagalake/Sitedescription). Process wastes and construction and demolition debris generated by Allied Signal and the Solvay Process Company were deposited at this Landfill. The facilities within the original HRS scoring package, including the Willis Avenue Plant, the LCP Bridge Street Plant, and the Solvay Waste Beds, were tied to Allied Signal and/or the Solvay Process Company. Contaminated wastes from these facilities have "come to be located" in the Mathews Avenue. Further, these wastes have migrated to wetlands which are adjacent to Geddes Brook, a tributary of Onondaga Lake. Given this direct and uninterrupted hydrological pathway between the contaminated site and Onondaga Lake, we believe that, by the terms of the HRS package, this subsite should be considered part of Onondaga Lake Superfund site and should be remediated as part of that federal action.

Crouse Hinds Landfill, on the other hand, appears to have accepted wastes only from the Crouse Hinds facility. This facility was not part of the original HRS package and the facility itself does not appear to have been a direct source of contamination to the Lake. Thus, the Landfill is not a site where contamination from sources within the Onondaga Lake Superfund site has come to be located.

The EPA has taken the position that the Crouse Hinds Landfill does not contribute contamination to Onondaga Lake, based on an assessment of contaminants present upstream and downstream from the site. However, there is an unobstructed groundwater to surface water pathway from the site to Ley Creek, which is a tributary of Onondaga Lake. Given this obvious and unobstructed pathway for contaminant transfer, this site should be considered part of the federal Superfund site as well. At minimum, the Nation believes that a more thorough assessment of the contaminants downstream of the Landfill is necessary to justify the EPA's conclusion regarding the Landfill's impacts on the Lake. Better methods, such as contaminant finger-printing or congener analysis, are available and should be employed before the EPA decides to remove Crouse Hinds Landfill from remediation under federal authority. However, if this more refined analysis supports the EPA's conclusion that Crouse Hinds Landfill does contribute contaminants to the Lake, the Nation will not object to EPA's determination not to take federal Superfund action at this site.

In conclusion, the Nation objects to EPA's determination not to take federal Superfund action at the Mathews Avenue Landfill site, because the evidence suggests that contamination from the

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original Superfund site has come to be located there. Without stronger evidentiary support for the position that Crouse Hinds Landfill is not a source of contamination to the Lake, the Nation objects to the determination with respect to Crouse Hinds Landfill as well. If EPA can provide the type of technical support described above, the Nation will review the determination that remedial action at the Crouse Hinds Landfill falls outside the scope of the Onondaga Lake Superfund Site.

Sincerely,

/s/

Joseph J. Heath

cc: Onondaga Nation Council of Chiefs